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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,863	06/19/2006	Mark F. Werner	9261-000005/US/NP	1089
27572 7590 07/23/2008 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER				
BLACK, MELISSA ANN				
ART UNIT		PAPER NUMBER		
3612				
MAIL DATE		DELIVERY MODE		
07/23/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/576,863

**Applicant(s)**

WERNER, MARK F.

**Examiner**

MELISSA A. BLACK

**Art Unit**

3612

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1.9 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1.9 and 11-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This Office Action is in response to Amendments and Remarks filed April 7, 2008. Claims 1, 9 and 11-28 are pending in this application and are rejected as set forth below.

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. **Claims 13 and 14** are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19615540 to Guntrum.

Re Claim 13, Guntrum discloses a liftgate frame (3) for a motor vehicle liftgate, the liftgate including a window (4) and a tailgate (5) pivotally coupled to the liftgate frame (3), the window and tailgate each being moveable between open and closed positions (Figure 4 and 5), the liftgate frame comprising: an upper frame member adapted to be pivotally coupled to the motor vehicle (top of frame 3); a substantially U-shaped tubular lower frame member (3, see figures) fixed to the upper frame member forming an uninterrupted ring surrounding an opening, the ring being moveable between open and closed positions (See Figure 2); a window hinge coupled to the liftgate frame and adapted to rotatably couple the window to the liftgate frame; a tailgate hinge coupled to the liftgate frame and adapted to rotatably couple the tailgate to the liftgate frame, wherein the opening is adapted to be unobstructed when the window and the tailgate are each in the open position. The tailgate hinge and the window hinge allow the window and tailgate to rotate about parallel axes. Re claim 14, Gruntrum discloses the upper frame member includes spaced apart vertically extending end segments forming a portion of the ring (see Figures 2-6 and Abstract).

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. **Claims 1, 9, 15, 16, and 21-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum in view of US Pat # 6,776,449 to Komatsu et al.

Re Claims 1, 15, 21-23 and 25, Paragraph 3 is hereby referenced as to what Guntrum discloses.

Guntrum fails to disclose the upper frame member includes an inner header panel fixed to an outer header panel.

Komatsu et al teaches the use of an inner header panel (111) fixed to an outer header panel (110).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include both inner and outer header panels as taught by Komatsu et al on the device of Guntrum in order to strengthen the header panel.

Re Claims 1, 9, 16 and 25, Guntrum fails to disclose the use of a reinforcing member having a first portion fixedly secured to the inner header panel and the outer header panel, the reinforcement member having a second portion fixedly secured to the lower frame member for reinforcing the attachment between said the upper and lower frame members, the first portion extends substantially perpendicular to the second portion, and the reinforcement member includes a substantially "L"-shaped cross-section.

Komatsu et al discloses the use of a reinforcing member (145, 146) having a first portion fixedly secured to the inner header panel (111) and the outer header panel (110), the

reinforcement member having a second portion fixedly secured to the lower frame member (130, See Figure 12) for reinforcing the attachment between said the upper and lower frame members, the first portion extends substantially perpendicular to the second portion, and the reinforcement member includes a substantially "L"-shaped cross-section (See Figures 14 and 16 of Komatsu et al. Figure 16 is a cross-sectional view of framing 111 taken at line 16 in Figure 14. The bottom portion of the reinforcement has the same cross-sectional view as that portion of the lower frame, which is substantially L-shaped).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the reinforcement as taught by Komatsu et al on the device of Guntrum in order to strengthen the connection at the hinges of the liftgate.

Re Claim 24, Guntrum fails to disclose a frame latch fixed to the horizontal segment of the lower frame member.

Komatsu teaches the use of a frame latch (118) fixed to the horizontal segment of the lower frame member (111, see figure 17 and column 13, lines 54-57).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include the door latch attached to the lower frame as taught by Komatsu on the device of Guntrum in order to secure the liftgate in a closed position.

6. **Claims 11, 17, 18 and 26** are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum and US Pat # 6,776,449 to Komatsu et al in view of DE19713317.

Re Claims 11, 17, and 26, Paragraphs 3 and 5 are hereby referenced as to what Guntrum discloses.

Guntrum and modified fails to disclose the reinforcement member extends into the tubular lower frame member.

DE 19713317 teaches the reinforcement member extends into the tubular lower frame.

It would have been obvious to do this to strengthen the connection of the reinforcement and the lower frame.

Re Claim 18 Guntrum as modified by Komatsu et al teaches the first portion of the reinforcement member extends perpendicular from the second portion and has a substantially L-shaped cross-section (See Figures 14 and 16 of Komatsu et al. Figure 16 is a cross-sectional view of framing 111 taken at line 16 in Figure 14. The bottom portion of the reinforcement has the same cross-sectional view as that portion of the lower frame, which is substantially L-shaped).

7. **Claim 19** is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum in view of US Pat # 6,719,356 to Cleland et al.

Guntrum fails to disclose the use of a control module coupled to said liftgate, adapted to output signals indicative of the position of said liftgate frame, the window and the tailgate.

Cleland et al teaches the use of a control module (41) coupled to the liftgate to indicate the position of the liftgate frame, the window and the tailgate.

It would have been obvious to one with ordinary skill in the art at the time the invention was made to use the control module as taught by Cleland et al on the device of the combination in order to prevent an obstruction from being pinched in the frame, liftgate or window during electronic operation.

8. **Claims 12 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum in view of US Pat # 6,983,968 to Brauer et al or US Pat # 7,032,958 to White et al or US Pat # 7,025,166 to Thomas.

Paragraphs 3, 5 and 6 are hereby referenced as to Guntrum's disclosed matter. Guntrum fails to disclose the liftgate frame further including wiring extending through the tubular lower frame.

Brauer et al teaches the use of having the wire in the tubular framing (Column 1, ll. 54-61).

White et al teaches the use of having the wire in the tubular framing (Column 4, ll. 13-15).

Thomas teaches the use of having the wire in the tubular framing (Column 7, ll. 5-13).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to have the wiring of the liftgate to be placed in the tubular frame as taught by Brauer et al, White et al and Thomas on the device of Guntrum in order to protect the wire from damage during simple use.

9. **Claim 27** is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum and US Pat # 6,776,449 to Komatsu et al in view of US Pat # 6,983,968 to Brauer et al or US Pat # 7,032,958 to White et al or US Pat # 7,025,166 to Thomas.

Guntrum as modified fails to disclose the liftgate frame further including wiring extending through the tubular lower frame.

Brauer et al teaches the use of having the wire in the tubular framing (Column 1, ll. 54-61).

White et al teaches the use of having the wire in the tubular framing (Column 4, ll. 13-15).

Thomas teaches the use of having the wire in the tubular framing (Column 7, ll. 5-13).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to have the wiring of the liftgate to be placed in the tubular frame as taught by Brauer et al, White et al and Thomas on the device of Guntrum in order to protect the wire from damage during simple use.

10. **Claim 28** is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19615540 to Guntrum and US Pat # 6,776,449 to Komatsu et al in view of US Pat # 6,053,562 to Bednarski.

Guntrum fails to disclose the liftgate frame is formed by tubular hydroforming.

Bednarski teaches that the liftgate frame (12) can be formed by tubular hydroforming (Claim 2).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to use tubular hydroforming as taught by Bednarski on the device of Guntrum, in order to form thin cross-sections and rounded corners.

#### ***Response to Arguments***

11. Applicant's arguments filed 7 April 2008 have been fully considered but they are not persuasive. Regarding the remarks to the 102 rejection of Claims 13 and 14, as claimed by the applicant the upper frame member (upper part of 3) of Guntrum is pivotally coupled to the motor vehicle being fixed to a substantially U-shaped tubular lower frame member forming an uninterrupted ring surrounding an opening, the claim does not specifically state that the frame can not be one piece, and as for the claim 14, the upper frame member (top of 3) includes spaced



apart vertically extending end segments that form a portion of the ring. Once again it does not claim that the upper frame member has to be a separate member from the lower frame member. Technically from the horizontal centerline of the frame member up can be considered upper frame member, therefore the 102 rejection is considered proper and the rejection still stands. Regarding the 103 rejections: Komatsu discloses that the upper frame member includes an inner header panel (111) fixed to an outer header panel (110). As Claimed the upper frame member is not an individual member, and therefore the Komatsu reference is considered obvious. As for the reinforcement areas 145 and 146 it is disclosed (Column 15, lines 17-22) that these two pieces are thicker which would constitute reinforcement of the material. As for the cross-section of the reinforcement members (145, 146), the examiner tried to explain that since the cross-section of the frame member is "L"-shaped and the edge of the frame member is welded to the reinforcement member (145,146) it is obvious that the abutting edges of 111 and 145, 146 have the same substantially "L"-shaped cross-section. Claims 1, 9, 11, 12 and 21-27 have been clarified. As for claim 28, Hydroforming is a well known operation and it is obvious in the automotive art to use the best operation to form the metal in order to achieve the desired results.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA A. BLACK whose telephone number is (571)272-4737. The examiner can normally be reached on M-F 7:00-3:30 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dennis H. Pedder/  
Primary Examiner, Art Unit 3612

mab  
1/7/08